In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 158

THE BOSTON METALS COMPANY AND PENNSYLVANIA THRESHERMEN & FARMERS' MUTUAL INSURANCE CO., PETITIONERS

v.

STEPHEN O'HEARNE, DEPUTY COMMISSIONER, FOURTH COMPENSATION DISTRICT, BUREAU OF EMPLOYEES COMPENSATION, U.S. DEPARTMENT OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-4a) is reported at 329 F. 2d 504. The opinion of the district court (Pet. App. 5a-7a) and the compensation order and award of the Deputy Commissioner (Pet. App. 8a-10a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on March 9, 1964. The petition for a writ of certiorari was filed on June 5, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether both courts below properly affirmed the Deputy Commissioner's determination that an injury, sustained by an employee working aboard a vessel deliberately run aground for dismantling in navigable waters, is compensable under the Longshoremen's and Harbor Workers' Compensation Act.

STATUTE INVOLVED

The Longshoremen's and Harbor Workers' Compensation Act, as amended, 33 U.S.C. 901, *et seq.*, provides in pertinent part (as it appears in the United States Code):

> § 902 [Section 2 of the Act]. *Definitions.*
>
> When used in this chapter—
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> * * * *
>
> (2) The term "injury" means accidental injury or death arising out of and in the course of employment * * *.
>
> * * * *
>
> (4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the

navigable waters of the United States (including any dry dock).

* * * * *

§ 903 [Section 3 of the Act]. *Coverage.*

(a) Compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. * * *

* * * * *

§ 920 [Section 20 of the Act]. *Presumptions.*

In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary—

(a) That the claim comes within the provisions of this chapter.

* * * * *

§ 921 [Section 21 of the Act]. *Review of compensation orders.*

* * * * *

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order * * *.

STATEMENT

The facts were stipulated and found by the Deputy Commissioner (Pet. App. 8a-9a), and are undisputed.

On July 21, 1961, Richard Harris was employed as a welder by petitioner Boston Metals Company, whose liability under the Longshoremen's and Harbor Workers' Compensation Act (hereafter the Longshoremen's Act) was insured by petitioner, Pennsylvania Threshermen & Farmers' Mutual Casualty Insurance Company. Boston Metals had purchased the U.S.S. "GUAM," a decommissioned battle cruiser, for the purpose of dismantling her for scrap. On July 18, 1961, the vessel, which had a mean draft of 26 feet 9 inches, was deliberately run into the mud in 23 feet of the navigable waters of the Patapsco River in Baltimore Harbor alongside of Boston Metals' main pier, and was secured to the pier to facilitate the dismantling. On July 21, 1961, while Harris was engaged in dismantling a gun turret aboard the GUAM, a fire broke out which burned him severely, and caused his death.

Harris' widow and four children filed a claim for compensation benefits under the Longshoremen's Act. By agreement of the parties the matter was submitted to the Deputy Commissioner on the stipulated facts set forth above in lieu of a formal hearing. On those facts the Deputy Commissioner awarded Mrs. Harris $30.52 per week during widowhood, and $27.61 per week for the maintenance and care of the four children (during their minority), plus accrued benefits and funeral expenses (Pet. App. 9a-10a).

The employer and insurance carrier brought suit in the district court under Section 21 of the Longshoremen's Act, 33 U.S.C. 921, *supra*, p 3, seeking to have the compensation order set aside on the grounds that the injury was not covered by the Longshoremen's Act, but was compensable only under the less generous provisions of the Maryland Workmen's Compensation Law.[1] The district court sustained the award, ruling that the injury occurred upon the navigable waters of United States, and that it was compensable under the Longshoremen's Act even though it may also have been within the ambit of the State workmen's compensation law (Pet. App. 5a-7a). The court of appeals affirmed (Pet. App. 3a-4a).

ARGUMENT

This case presents the single, narrow question of whether the deputy commissioner properly awarded compensation under the Longshoremen's Act for an injury occurring upon a vessel run aground in navi-

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[1] Under the Workmen's Compensation Act of Maryland, death benefits can not exceed $15,000, nor can they exceed $48 per week or extend more than 500 weeks. Art. 101, § 36, Annotated Code of Md. (1963 Cum. Supp.). Under the Longshoremen's Act, there is no ceiling for death or total and permanent disability benefits (33 U.S.C. (Supp. IV) 914(m)), and maximum benefits are $70 per week payable indefinitely (33 U.S.C. 909(b) and 33 U.S.C. (Supp. IV) 909(e)). Under the compensation order in this case it is estimated (based upon no remarriage and the widow's life expectancy to age 74) that the claimants will receive a gross amount of approximately $105,000 under the Longshoremen's Act, in contrast to the $15,000 maximum under the Maryland statute.

gable waters for dismantling. Applying the settled principles established by the prior decisions of this Court, both courts below sustained the award. There is no occasion for review by this Court.

Section 3 of the Longshoremen's Act (33 U.S.C. 903, *supra*, p. 3) provides that the Act is applicable to an "injury occuring upon the navigable waters of the United States." In *Calbeck* v. *Travelers Insurance Co.*, 370 U.S. 114, 116, 117, this Court ruled that the Longshoremen's Act was intended "to provide compensation for all injuries sustained by employees on navigable waters whether or not a particular injury might also have been within the constitutional reach of a state workmen's compensation law" and concluded that a vessel under construction and afloat on navigable waters was within the coverage of the Act. In this case, the Act was likewise applicable because the injury occurred upon a vessel which was emersed in 23 feet of the navigable waters of Baltimore Harbor.

Petitioners contend, however, that the injury did not occur "upon navigable waters" within the meaning of Section 3 of the Longshoremen's Act (33 U.S.C. 903 (a)) because the vessel had been run aground. They then urge (Pet. 9-10) that a vessel aground should be analogized to piers, wharves, bridges, and other extensions of land which are not within the Act. This analogy is unsound. The Longshoremen's Act was intended to cover injuries occurring "within the maritime jurisdiction of the United States." S. Rept. 973, 69th Cong., 1st Sess., pp. 16-17, quoted in *Calbeck* v. *Travelers Ins. Co.*, *supra*, 370 U.S. at 121; H. Rept.

1767, 69th Cong., 2d Sess., p. 20, quoted in *Calbeck*, *supra*, 370 U.S. at 122. At the time of the adoption of the Longshoremen's Act, it was recognized that vessels in navigable waters were within the maritime jurisdiction, even if they were aground. *E.g.*, *Payne* v. *Jacksonville Forwarding Co.*, 290 Fed. 936 (C.A. 5). Moreover, a vessel aground in navigable waters is more like a vessel afloat in such waters than it is like a bridge or wharf. Like a vessel afloat, a vessel run aground for dismantling is to remain there only temporarily, and the space it occupies is not permanently removed from navigation.

Petitioners apparently agree (Pet. 12) that a vessel which accidentally grounded and constitutes a hazard to navigation is within the coverage of the Act, but emphasize that here the grounding was deliberate and did not endanger navigation. We see no distinction between the two situations which is in any way relevant to the issue concerning the coverage of the Act. In both situations, a vessel is emersed in navigable water and is far more closely related to a vessel afloat than a bridge or wharf. Moreover, the attempted distinction is incompatible with the liberal purposes of the Longshoremen's Act and the principles enunciated by this Court in *Calbeck* and other cases. See *Davis* v. *Department of Labor*, 317 U.S. 249. The fineness of the attempted distinction also demonstrates the narrowness of the question presented and its lack of importance.

Even if there were a reasonable basis for doubt as to the coverage of the Act in the case at bar, the

statutory presumption of coverage (Section 20(a), 33 U.S.C. 920(a), *supra*, p. 3) is sufficient to sustain the claimant's election to seek Longshoremen's Act benefits. This Court has held on the basis of this Section that the agency's findings that the Act applies are "entitled to great weight." *Davis* v. *Department of Labor*, *supra*, 317 U.S. at 256-257. See also *Hahn* v. *Ross Island Sand & Gravel Co.*, 358 U.S. 272, 273; *Avondale Marine Ways* v. *Henderson*, 346 U.S. 366. At the very least, the Deputy Commissioner's determination here is reasonable and supported by the evidence.[2]

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[2] *Jeffers* v. *Foundation Co.*, 85 F. 2d 24 (C.A. 2), relied upon by petitioner (Pet. 10), was a Jones Act suit, in which the court held that a seaman could not recover for an injury occurring upon the foundation of a pier of a bridge, which the court considered an extension of land. It was overruled by the decision of this Court in *O'Donnell* v. *Great Lakes Co.*, 318 U.S. 36, permitting Jones Act recovery for injuries upon land. Moreover, its reasoning supports the decisions below, for its ruling that the pier was an extension of land rested upon the fact that the space which it occupied "had been permanently withdrawn from the river" and was therefore "no longer a part of the navigable waters of the United State." 85 F. 2d at 25. The other decision relied upon by petitioners, *Massman Const. Co.* v. *Bassett*, 30 F. Supp. 813 (E.D. Mo.), was reversed on appeal for lack of jurisdiction. 120 F. 2d 230 (C.A. 8), certiorari denied, 314 U.S. 648. Moreover, the case is not in point since it involved a cofferdam.

Petitioners have found no reported judicial decisions under the Longshoremen's Act involving injuries occurring aboard vessels which were deliberately grounded in and upon navigable waters and we are aware of none.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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